

Bengal Act XVI of 1935

[THE BENGAL DEVELOPMENT ACT, 1935.]¹

AMENDED

West Ben. Act XXIV of 1954.
West Ben. Act IX of 1958.
West Ben. Act I of 1963.

ADAPTED

- (a) The Government of India (Adaptation of Indian Laws) Order, 1937.
- (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
- (c) The Adaptation of Laws Order, 1950.

[3rd October, 1935.]

An Act to provide for the development of lands in Bengal and to impose a levy in respect of increased profits resulting from improvement works constructed by the Government.

WHEREAS it is expedient to provide for the development of lands in Bengal and for that purpose to impose a levy in respect of increased profits resulting from improvement works constructed by the Government and to provide further powers in regard to works of improvement;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Development Act, 1935.
- (2) It extends to the whole of ²[West Bengal].
- (3) It shall come into force on such date³ as the ⁴[State Government] may, by notification, appoint.

Short title,
extent and
commence-
ment.

5 and 6 Geo.
V. c. 61;
6 and 7 Geo.
V. c. 37;
9 and 10
Geo. V.
c. 101.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1935, Pt. IV, page 49; and for report of the Select Committee, see *ibid.* page 150; and for Proceedings of the Council, see the Proceedings of the Bengal Legislative Council, Vol. XLV, No. 1, page 217, and *ibid.* No. 2, pages 78 and 121 and *ibid.* Vol. XLVI, No. 1, pages 88, 140, 188, 237, 289, 335 and 393.

²The words within square brackets were substituted for the word "Bengal" by Art. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³This Act came into force on the 23rd January, 1936, vide Notification No. 1-1, dated the 20th January, 1936, published in the *Calcutta Gazette*, dated the 23rd January, 1936, Part I, page 194.

⁴The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

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(Section 2.)

Definitions.

2.

2. In this Act, unless there is anything repugnant in the subject or context,—

- (1) "agricultural lands" include lands used for the growing of vegetables and the like but does not include fruit gardens, orchards or homestead lands;
- (2) "canal" means a canal as defined in clause (f) of section 3 of the Bengal Irrigation Act, 1876;
- (3) "Collector" includes any officer specially appointed by the ¹[State Government] to perform all or any of the functions of a Collector under this Act;
- (4) "dead or decayed river" includes any river into which, or along any part of which, water has ceased to flow as freely as it would have flowed if it had not been diverted or obstructed whether owing to natural causes or as a result of interference by man, and includes also any depression which at one time formed part of a river-bed but through which there is no longer any perennial flow of water;
- (5) "improvement work" means any work of improvement ²[constructed, before the commencement of Part III of the Government of India Act, 1935, by any Government or constructed or proposed to be constructed after that date by the State Government] which the ¹[State Government] has, by notification, declared to be an improvement work for the purposes of this Act:

Provided that no road or railway constructed before the commencement of this Act shall be so declared;
- (6) "notification" means a notification published in the ³[Official Gazette];
- (7) "notified area" means any area in respect of which the ¹[State Government] has, by a notification issued under sub-section (1) of section 5, declared its intention to impose an improvement levy, and includes any part of such area;
- (8) "period for objection" means a period mentioned in a notification under this Act within which objections or suggestions will be received;

Ben. Act III
of 1876.

26. Geo. V.
c. 2.

¹See foot-note 4 on page 1, ante.

²These words and figures, except the word "State" which was subsequently substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950, were substituted for the words "constructed by the Government, before or after the commencement of this Act, or proposed to be constructed by the Government" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words "Calcutta Gazette" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

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(Sections 3-6.)

2. (9) "prescribed" means prescribed by rules made under this Act; and
- VIII of 1885. (10) "rent" and "tenant" have the same meanings as in the Bengal Tenancy Act, 1885.

3. Whenever, in the opinion of the ¹[State Government], any improvement work has increased or is likely to increase the profits from the produce from any agricultural land, or to increase the outturn of such produce, within any area, the ¹[State Government] may, by notification, declare its intention to impose an improvement levy within that area.

Preliminary notification of intention to impose improvement levy.

4. A notification under section 3 shall state the following particulars—

Publication of particulars.

- (a) as full a description of the improvement work as, in the opinion of the ¹[State Government], may be practicable;
- (b) the object for which such work has been, or is proposed to be, constructed; and
- (c) the boundaries of the area within which the ¹[State Government] intends to impose the improvement levy.

5. (1) After the expiry of a period for objection to be mentioned in a notification under section 3 the ¹[State Government] shall consider the objections and suggestions, if any, received by it and thereafter shall, by notification, declare its intention either wholly to refrain from imposing the improvement levy or to impose the same in the area concerned or in a specified part thereof, whereupon the area in respect of which the ¹[State Government] has by such a notification declared its intention to impose the improvement levy shall be deemed, for the purposes of this Act, to be a notified area.

Abandonment of intention or declaration of intention to impose improvement levy.

(2) The ¹[State Government] may, so far as may be in the manner hereinbefore provided, from time to time include in or exclude from any notified area any area which, in the opinion of the ¹[State Government], has benefited or has not benefited, as the case may be, from the improvement work.

6. No expenditure shall be incurred for the construction of any improvement work in respect of which the ¹[State Government] intends to impose an improvement levy, and no improvement levy shall be imposed in respect of any improvement work, unless the ²[West Bengal] Legislative ³[Assembly] has, by a resolution, recommended the imposition of an improvement levy in respect of such work:

Recommendation by the West Bengal Legislative Assembly for imposition of improvement levy.

¹See foot-note 4 on page 1 *ante*.

²See foot-note 2 on page 1 *ante*.

³This word was substituted for the word "Council" by para. 3 and Sch. IV to the Government of Bengal Act, 1947 (No. 10 of 1947).

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(Sections 7-9.)

² Provided that nothing in this section shall apply to the Damodar Canal (including the Eden Canal) and ¹[the Mayurakshi Reservoir Project, including] the Bakreswar Canal.

Imposition of improvement levy.

7. When the ²[State Government] is satisfied that a notified area has benefited or is likely to benefit from an improvement work it may, by notification, subject to the provisions of section 6, impose the improvement levy in that area from such date as may be specified in the notification.

Estimate of increased outturn of produce from agricultural land.

8. (1) From time to time an officer appointed by the ²[State Government] shall, in accordance with rules made under this Act, and after hearing any objections in the prescribed manner, prepare in respect of land throughout a notified area an estimate of the average increase in the outturn of the produce from agricultural land of any class which, in his opinion, has been or is likely to be made possible by any improvement work, on the assumption that the land has produced and will produce the staple food crop notified under section 39 of the Bengal Tenancy Act, 1885, in respect of that land:

VIII of 1885.

Provided that the ²[State Government] may, at its discretion, direct that the estimate be made on the assumption that the land has produced or will produce some other crop or crops.

(2) The Board of Revenue shall, by notification, publish such estimate and, after a period for objection to be specified in such notification, shall consider the objections and suggestions, if any, received by it and shall report to the ²[State Government] thereon. Thereafter the ²[State Government] may reject the estimate or may, by notification, accept it with or without modification, whereupon the accuracy of any estimate so accepted shall not be questioned in any Court.

(3) Where an estimate has been accepted under sub-section (2) in respect of a notified area before the imposition of the improvement levy, such estimate shall, as soon as may be practicable after the expiry of two years from the date of the imposition of the levy, be revised in the manner provided in sub-section (1) and (2) for the preparation, publication, and acceptance of an estimate.

Fixing value of increased outturn.

9. The ²[State Government] shall, by notification, fix annually or for such period not exceeding five years as may be specified in the notification the price or prices on the basis of which the value of the average increase in the outturn, as estimated under section 8, from land of any class in a notified area is to be calculated.

¹The words within square brackets were inserted by s. 2 of the Bengal Development (Amendment) Act, 1954 (West Ben. Act XXIV of 1954).

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(Section 10.)

10. (1) Notwithstanding anything contained in any other Act the improvement levy shall be imposed in respect of agricultural lands within a notified area at such rate or rates as the ¹[State Government], may, by notification, from time to time declare, and different rates may be so declared for classes of land of different descriptions or having different advantages:

Maximum
limit and
incidence of
improvement
levy.

Provided that any rate so fixed shall not exceed one-half of the estimated net increase, resulting from the improvement work, in the profits or one-half of the net value of the estimated increase in outturn:

²Provided further that pending the declaration of any rate or rates under the first paragraph, the State Government may, subject to the provision of sub-section (6), by notification, declare such rate or rates, as it deems suitable, and thereupon improvement levy shall be payable for the time being at such rate or rates, and any amount paid at such rate or rates shall be subsequently adjusted against the amount payable at the rate or rates declared under the first paragraph.

Such improvement levy shall be payable by the occupiers of such lands within the notified area.

Explanation.—In this sub-section the expression “estimated increase in outturn” means the average increase in the outturn of agricultural produce as estimated under section 8.

(2) The rate or rates of the improvement levy shall be fixed under sub-section (1) for one year or for such period not exceeding five years as may be specified in the notification issued under that sub-section.

(3) For the purposes of sub-section (1) the net increase in the profit and the net value of the estimated increase in outturn shall be estimated, in accordance with rules made under this Act, on the price or prices fixed under section 9.

(4) The ¹[State Government] may, by rules made under this Act, declare what persons or classes of persons shall be deemed, for the purposes of sub-section (1), to be occupiers of land but no person shall, by such rules, be declared to be an occupier of land unless, otherwise than as a hired labourer, he cultivates such land or (if it is not cultivated) unless he is in direct possession of such land.

(5) Notwithstanding anything contained in sub-section (4), where a person under the system generally known as “adhi”, “barga” or “bhag”, cultivates the land of another person on condition of delivering a share of the produce to that person or receiving a share thereof from him, the person whose land is cultivated and the person who cultivates it shall each be deemed, for the purposes of sub-section (1), to be an occupier of such land, and each shall be liable to pay a prescribed proportion of the improvement levy imposed in respect of such land, and any contract to the contrary shall, to that extent, be void.

¹See foot-note 4 on page 4, ante.

²This further proviso was inserted with retrospective effect by s. 2 of the Bengal Development (Amendment) Act, 1958 (West Bengal Act IV of 1958).

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(Sections 11, 12.)

(6) In the case of any land, the amount of improvement levy realised for any year—

- ¹(a) in respect of the Mayurakshi Reservoir Project, including the Bakreswar Canal, shall not exceed ten rupees per acre;
- (b) in respect of the Damodar Canal and the Eden Canal shall not exceed five rupees eight annas per acre:

Provided that in the case of any land which was irrigated from the Eden Canal in any year during the ten years prior to the first day of April, 1935, such amount shall not exceed three rupees eight annas per acre.

Additional
improvement
levy in certain
cases.

11. (1) Notwithstanding anything contained in section 10, if in any notified area any unculturable waste, swamp, or sand has, as a result of an improvement work, become culturable land, and such land is thereafter settled with any tenant, the person who settles the land shall be liable to pay, in one sum, an improvement levy of such amount as may be fixed by the Collector, in accordance with rules made under this Act, after considering any objection that may be made in the prescribed manner by such person.

(2) The amount fixed under sub-section (1) shall not exceed one-half of the difference between—

- (a) the amount which the Collector estimates to be the usual *salami* for a like area of land, in the vicinity, similar in its description and its advantages to the land as it is at the time of the settlement, and
- (b) the amount which the Collector estimates to have been the usual *salami* before the commencement of the improvement work, for a like area of land, in the vicinity, similar in its description and its advantages to the land as it was at that time.

Such levy shall be additional to the levy payable under section 10 by the occupier of the land.

Amount of
improvement
levy after
realisation of
capital cost
and other
charges.

12. When in respect of any improvement work—

- (a) the capital cost of such work, including the cost of any extensions, improvements or modification of the work,
- (b) the interest charges on such capital cost,
- (c) any working loss in any year or years, and
- (d) the interest on such loss,

¹Clause (a) was substituted for the original clause by s. 3 of the Bengal Development

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(Sections 13, 14.)

as determined by the ¹[State Government], have been recovered in full out of the proceeds of the improvement levy, by such annual allocations as may be prescribed, the amount of the improvement levy to be realised for each year in respect of such work shall thereafter be reduced to such a sum as the ²[West Bengal] Legislative ³[Assembly] may, by a resolution, recommend:

Provided that in respect of the ⁴[Damodar and Eden] Canals such sum shall not exceed the amount required to meet the annual cost, as determined by the ¹[State Government], of maintenance and supervision of the improvement work and of collection of the improvement levy.

Explanation.—The term “working loss” means the sum by which the proceeds of the improvement levy in any year or years fall short of the amount necessary to meet—

- (i) the annual allocation for such year or years in respect of the charges specified in clauses (a) and (b), and
- (ii) the cost, as determined by the ¹[State Government], of maintenance and supervision of the improvement work, and of collection of the improvement levy, during such year or years.

13. The Collector shall, from time to time, prepare and publish in the prescribed form and manner for a notified area or any part thereof a statement showing—

- (i) the name of every person who is liable to pay the improvement levy in respect of any land in such area or part, and
- (ii) the amount of improvement levy to be paid by each such person, annually or otherwise, in respect of such land.

Preparation and publication of statements of imposition of improvement levy.

14. The Collector shall serve a notice of demand in the prescribed form and manner and containing the prescribed particulars, on every person whose name appears in a statement published under section 13 requiring him to pay the levy by such date or dates as may be specified in the notice.

Notice of demand.

¹See foot-note 4 on page 1, ante.

²See foot-note 2 on page 1, ante.

³See foot-note 3 on page 3, ante.

⁴Substituted for the words “Damodar, Eden and Bakreswar” by s. 4 of the Bengal Development (Amendment) Act, 1954 (West Ben. Act XXIV of 1954).

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(Sections 15-18.)

Republication
of statements
and revised
notice of
demand.

15. (1) After forty days from the date of publication of a statement under section 13 the Collector shall, in accordance with rules made under this Act, republish the statement with such modifications as he may have made as a result of representations by persons whose names were included therein, and, subject to any decisions by an appellate or revisional authority, all entries in the statement as thus republished shall be presumed to be correct in every particular for the purposes of this Act.

(2) If the Collector makes any modification referred to in sub-section (1) in the statement he shall serve on the person concerned a revised notice of demand in the prescribed form and manner and containing the prescribed particulars.

Supple-
mentary
statements.

16. (1) The Collector may, from time to time, add to or alter in the prescribed manner any statement republished under sub-section (1) of section 15. In such case, the Collector shall publish in the prescribed form and manner a supplementary statement showing any addition or alteration so made, and the provisions of this Act shall apply to such supplementary statement as if it were a statement published under section 13.

(2) Where any addition to or alteration in a statement is required as a result of a decision of an appellate or revisional authority, the Collector shall add to or alter the statement accordingly, and it shall not be necessary to publish any supplementary statement in respect thereof under sub-section (1).

Appeals in
regard to
improve-
ment levy.

17. (1) Any person may appeal within thirty days from the date of service of the notice under section 14 or of a revised notice, if any, under sub-section (2) of section 15 or from the date of republication of a statement under sub-section (1) of section 15, whichever is later, to the Commissioner of the Division, on the ground that he has been wrongly shown in the statement as liable to pay the improvement levy or that the amount shown in such statement as payable by him is incorrect, and the decision of the Commissioner of the Division on such appeal shall, subject to the provision of sub-section (2), be final.

(2) The Board of Revenue may, on application made within thirty days from the date of the order of the Commissioner of the Division, revise such order.

Bar to
objections to
improvement
levy, except
as provided
in this Act.

18. No objection shall be taken to the imposition of an improvement levy, nor shall the liability of any person to pay the same be questioned, in any other manner than that provided in this Act.

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(Sections 19-24.)

19. Copies of entries in a statement published under section 13 or republished under sub-section (1) of section 15 shall be made available in the prescribed manner on payment of the prescribed fee. Copies of entries in statement.
20. Notwithstanding anything contained in this Act, the Collector may, subject to rules made by the '[State Government], at any time grant abatement or remission of the improvement levy payable under this Act. Power of Collector to grant abatement or remission of improvement levy.
21. (1) Subject to the provisions of section 20, the Collector shall, in the prescribed manner, collect from any person whose name appears in a statement republished under sub-section (1) of section 15 the amount shown therein as due from him together with any interest payable under sub-section (2). Collection of improvement levy.
- (2) If any amount of improvement levy due from any person is not paid on or before the prescribed date, interest at such rate, not exceeding six and a quarter *per cent.* per annum, as the '[State Government] may fix from time to time, shall be payable thereon from the date of the default.
22. If any person has paid any amount as improvement levy which, in accordance with the decision of the appellate or revisional authority, or in the opinion of the Collector, was not payable by such person, the Collector shall, in the prescribed manner, refund the amount to such person. Refunds.
23. All arrears of improvement levy, together with interest due thereon, and other dues payable to the '[State Government] under this Act shall be recoverable as public demands. Recovery of arrears and other dues.
24. (1) If, in the opinion of the '[State Government], it is desirable for the purpose of collecting information regarding the outturn of produce from any agricultural land, the '[State Government] may, by general or special order, authorise any officer and his servants and workmen, subject to rules made under this Act, to enter upon any land and to do any acts necessary for the purpose of obtaining such information. Power to enter on land and to cut and remove crops.
- Provided that no person shall enter into any building or upon any enclosed courtyard or garden attached to a dwelling house (except with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

¹See foot-note 4 on page 1. *contd.*

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(Sections 25-27.)

(2) If, in the opinion of any officer authorised under sub-section (1), it is necessary to remove any crop for the purpose of ascertaining, by weighment or otherwise, the amount of the produce derived from any land, he may, subject to rules made under this Act, and after giving notice in writing, forthwith take possession of any standing crop on such land or part thereof, and may cause such crop to be cut and to be removed within such reasonable period as he may consider necessary.

(3) In every case under sub-section (2), such officer shall offer to the persons interested compensation for the standing crop cut and, subject to rules made under this Act, for any other damage caused during the process of cutting and removal; and, if such offer is not accepted, the value of the crop cut and the amount of the damage so caused shall be assessed by the Collector in the prescribed manner.

Power to
compel
production
of statements
and
documents.

25. (1) Subject to rules made under this Act, any officer authorised under sub-section (1) of section 24 may, by notice, require any person to make and deliver to him a statement or to produce records or documents in his possession or control relating to any land mentioned in that sub-section, at a time and place specified in the notice.

(2) Every person required to make or deliver a statement or to produce any record or document under this section shall be deemed legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

Act XLV
of 1860.

Power of
Collector
to enforce
attendance
of witnesses
and produc-
tion of
documents.

26. For the purposes of any inquiry under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the persons interested or any of them, and to compel the production of documents by the same means and, so far as may be, in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908.

Act V
of 1908.

Dues payable
under other
Acts in
respect of
improvement
works.

27. (1) Notwithstanding anything contained in any other Act, no person who has been declared liable to pay an improvement levy in respect of any land benefited by an improvement work shall be liable to pay any rates, dues or charges to the '[State Government] under any of the Acts mentioned in the Schedule in return for any benefit derived by such land from the improvement work.

(2) When an improvement levy is imposed under this Act in any area in respect of an irrigation work and an agreement exists for the supply of water under the Bengal Irrigation Act, 1876, to any land in that area, the improvement levy shall not be payable in respect of such land until the expiry of the agreement.

Ben. Act III
of 1876.

¹The words "Provincial Government" were originally substituted for the word "Government" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

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(Sections 28-32.)

Ben. Act III
of 1876.

28. (1) Within a notified area water may be supplied from a canal to any land notwithstanding the fact that no application has been made under section 74 of the Bengal Irrigation Act, 1876.

Supply of
water and
application
of rules
under the
Bengal
Irrigation
Act, 1876.

(2) In any notified area specified by the '[State Government], by notification, in this behalf any person by whom an improvement levy is payable under section 10 shall, subject to the provisions of sub-section (1) of section 27, be bound by any rules made under the Bengal Irrigation Act, 1876, for the time being in force, as if he had presented an application under section 74 of the said Act and such application had been granted.

29. Notwithstanding anything contained in the Bengal Irrigation Act, 1876, no person shall have a right to a supply of water under that Act in a notified area within any period prescribed in this behalf.

Right to
supply of
water.

30. Whenever it appears expedient to carry out any scheme of drainage for the betterment of public health or for the improvement of any land or in connection with irrigation works, the '[State Government] may, after issuing a notification and, in the prescribed manner, calling for and considering objections, if any, cause such a scheme to be drawn up and carried into execution, and any officer authorised in this behalf by the '[State Government] may exercise in connection with such scheme all or any of the powers conferred on Canal Officers by sections 33, 34 and 35 of the Bengal Irrigation Act, 1876, and thereupon the provisions of sections 36, 37 and 38 of that Act shall be applicable as if such officer were a Canal Officer.

Power to
carry out
drainage
works.

31. The '[State Government] may, if it is of opinion that in any area to be specified in a notification the whole or part of any river, stream, natural water-channel or natural drainage-course should be open to the unrestricted passage of water, exercise such powers as may be exercised under the Bengal Irrigation Act, 1876, with regard to the prohibition, removal or modification of obstructions in any river, stream, natural water-channel or natural drainage-course, and the provisions contained in that Act with regard to and, subject to the provisions of section 35, incidental to the exercise of such powers shall be applicable *mutatis mutandis* so far as they may reasonably be applied.

Power to
prohibit,
remove or
modify
obstructions
to the
passage of
water in
channels.

32. (1) The '[State Government] may, by notification, declare that in any area specified in the notification every person shall be bound, for irrigation purposes or for the drainage of land which has been irrigated, to afford a free passage to water through or over any land in his possession or under his control ²[and, for that purpose, to allow, when so required by the Collector by order made in this behalf, the construction and maintenance of such channels as may be necessary without causing unnecessary loss or damage to such land.]

Power to
modify
obstructions
to the
passage of
water
through or
over land.

¹See foot-note 4 on page 1, ante.

²The words within square brackets were added by s. 2(a) of the Bengal Development (Amendment) Act, 1963 (West Ben. Act I of 1963).

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(Section 33.)

¹(1A) If any person refuses to comply with an order of the Collector under sub-section (1) for the construction or maintenance of any channel, the Collector may cause the channel to be constructed or maintained, as the case may be, and may recover the costs thereof from such person.

¹(1B) Notwithstanding anything contained in any other law for the time being in force, no person shall be entitled to claim any compensation for any damage or loss which may be caused as a result of the construction or maintenance of any channel under sub-section (1) or sub-section (1A).

(2) After the issue of a notification under sub-section (1) the Collector, if in his opinion the free passage of water through or over any land in such area is necessary for irrigation purposes or for the drainage of land which has been irrigated, may, subject to rules made under this Act, from time to time issue a general or special order upon persons who have such land in their possession or under their control to modify, in such manner and within such period as may be specified in the order, any artificial obstruction that exists on such land ²[or in any channel constructed thereon under sub-section (1) or sub-section (1A)] to such free passage, or to show cause against such order.

(3) If the Collector is not satisfied with any cause that may have been shown, he shall fix a further period within which the obstruction shall be modified.

(4) If any person fails to comply with an order under sub-section (2) or sub-section (3), or under section 37, in respect of such modification, he shall be liable on conviction by a magistrate to a fine not exceeding fifty rupees for each such offence, and to a further fine not exceeding five rupees for each day after conviction during which the obstruction remains unmodified, and the Collector may cause the obstruction to be modified and may recover the cost of modification from such person.

Notification
of dead or
decayed
rivers.

33. (1) The ³[State Government] may, from time to time, publish by notification a list of rivers or depressions which it intends to declare to be dead or decayed rivers.

(2) In any list published under sub-section (1) any river or depression may be described either by name or by reference to its geographical situation.

(3) After the expiry of a period for objection to be mentioned in a notification under sub-section (1), the ³[State Government] shall consider the objections and suggestions, if any received by it and thereafter may, by notification, declare any river or depression notified under that sub-section to be a dead or decayed river, and such declaration shall be final and shall not be questioned in any Court or in any other manner whatsoever.

¹Sub-sections (1A) and (1B) were inserted by s. 2(b) of the Bengal Development (Amendment) Act, 1963 (West Ben. Act 1 of 1963).

²The words, figures, letter and brackets within square brackets were inserted by s. 2(c), *ibid.*

³See foot-note 4 on page 1, *ante.*

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(Sections 34-36.)

34. No person shall be entitled to claim any compensation under this or any other Act for any injury, damage or loss caused by a dead or decayed river which has been revived as a result of an improvement work, or by any other river into which it flows or spills, unless the injury, damage or loss is such as would have rendered the '[State Government]' liable to pay compensation had the river not been revived.

Limitation
of claims for
compensa-
tion.

Explanation.—A dead or decayed river is said to be revived when an increased volume of water is, by any means whatsoever, caused to flow freely into or along any part of such dead or decayed river.

35. Subject to the provisions of section 34, whenever—

- (a) any damage is caused as a result of the prohibition, removal or modification of an obstruction under section 31 or section 32, or
- (b) any land or right of property is injuriously affected by any improvement work in respect of which an improvement levy is imposed under this Act,

Claims for
compensa-
tion.

the person by whom any damage or loss is sustained shall not be entitled to claim any compensation for such damage or loss under any other Act, but such person may, not later than six months after the first occurrence of the injury in respect of which the claim is preferred, prefer to the Collector a claim for compensation.

36. (1) When a claim is preferred under section 35, the Collector shall, in the prescribed manner, after such inquiry as he deems proper and after considering any representations which may be made to him, determine the amount of compensation, if any, which shall be granted.

Determina-
tion of
amount of
compensa-
tion.

(2) In determining whether any and, if so, what amount of compensation shall be granted, the Collector shall be bound by the provisions of any rules made by the '[State Government]' under this Act regulating the grant of compensation under this section.

(3) When the amount of compensation has been determined under sub-section (1), if any dispute arises as to the apportionment of the same or any part thereof, the Collector shall, in the prescribed manner, refer such dispute to the Court, and such Court or any other Court mentioned in sub-section (5) to which the dispute may, subject to rules made under this Act, be transferred for decision, shall decide the same.

(4) In every reference under sub-section (3) the costs shall be at the discretion of the Court.

(5) In this section "Court" means a principal Civil Court of original jurisdiction and includes the Court of any Additional Judge, Subordinate Judge or Munsif whom the '[State Government]' may appoint, by name or by virtue of his office, to perform concurrently with any such principal Civil Court the functions of the Court under this section within any

The Bengal Development Act, 1935.

[Ben. Act XVI]

(Sections 37-39.)

specified local limits and, in the case of a Munsif up to the limits of the pecuniary jurisdiction with which he is vested under section 19 of the Bengal, Agra and Assam Civil Courts Act, 1887.

XII of 1887.

Appeals
from certain
decisions
and orders
of Collector.

37. (1) Any person aggrieved by a decision or order of the Collector under section 20, sub-section (3) of section 24, section 32 or sub-section (1) of section 36 may appeal, within thirty days from the date of such decision or order, to the Commissioner of the Division, whose decision on such appeal shall, subject to the provisions of sub-section (2), be final.

(2) The Board of Revenue may, on application made within thirty days from the date of the order of the Commissioner of the Division, revise such order.

Costs.

38. In every appeal under sub-section (1) of section 17, or under sub-section (1) of section 37, and in every revision under sub-section (2) of section 17 or under sub-section (2) of section 37, the costs shall be at the discretion of the appellate or revisional authority, and such costs shall be recoverable as a public demand.

Restrictions
on enhance-
ment of
rent of
agricultural
lands in
notified area.

39. Notwithstanding anything contained in the Bengal Tenancy Act, 1885, when an improvement levy has been imposed in respect of any agricultural land—

VIII of
1885.

(a) the rent payable for such land at the time of the imposition of the levy or fixed thereafter in accordance with the provisions of clause (b) shall not be enhanced on account of—

- (i) benefits derived from the construction of any improvement work, or
- (ii) an increase in the productive powers of the land due to fluvial action;

(b) if a settlement is made of such land with a tenant thereafter, the rate of rent at which such land is settled shall not exceed the average rate of money rent payable, at the time of such settlement, by tenants of a similar class for land of a similar description and with similar advantages in the vicinity, and any rent in excess of such rate shall not be recoverable:

Provided that such average rate may be exceeded on the grounds specified in clause (b) or clause (c) of section 30 of the Bengal Tenancy Act, 1885, by such amount as would be allowable in a suit for enhancement of rent under the said section if the land had been settled with a tenant at such average rate at the time of the imposition of the levy.

A stipulation in any contract by which a tenant taking settlement of such land agrees to pay any amount in excess of such rent, otherwise than as *salami*, shall not be binding on such tenant to the extent of such excess.

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of 1935.]

(Sections 40-44.)

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| <p>40. The '[State Government] shall cause every notification under this Act to be published in such manner and such places as it thinks fit.</p> | <p>Publication of notifications.</p> |
| <p>41. No proceedings under this Act shall be defeated or invalidated by reason of any defect or omission in the publication or service of any notification, statement, notice or order unless material injury is done to any person by such defect or omission.</p> | <p>Proceedings not to be invalidated by irregularities.</p> |
| <p>42. No suit shall lie in any Civil court for compensation in respect of any injury, damage or loss resulting from an improvement work or from anything done under this Act.</p> | <p>Bar to suits for compensation.</p> |
| <p>43. No suit or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.</p> | <p>Indemnity.</p> |
| <p>44. (1) The '[State Government] may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.</p> | <p>Rules.</p> |
- (2) In particular and without prejudice to the generality of the foregoing power, the '[State Government] may make rules to provide for all or any of the following matters, namely:—
- (a) the manner in which the average increase in the outturn of agricultural produce shall be estimated under section 8 and the manner of hearing objections under sub-section (1) of that section;
 - (b) the persons or classes of persons who shall, for the purposes of sub-section (1) of section 10, be deemed to be occupiers of land;
 - (c) the manner in which the net increase in the profits and the net value of the estimated increase in outturn shall be estimated under sub-section (3) of section 10;
 - (d) the proportion of improvement levy payable under sub-section (5) of section 10 by different classes of "adhiars", "bargadars" or "bhagdars" and by the persons whose land is cultivated by such "adhiars", "bargadars" or "bhagdars";
 - (e) the determination of the amount of improvement levy payable under section 11 and the manner in which objections under sub-section (1) of that section shall be made;

¹See foot-note 4 on page 9 ante.

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[Ben. Act XVI]

(Section 44.)

- (f) the annual allocations to be made under section 12 in respect of each improvement work;
- (g) the form and manner of preparation and publication of a statement under section 13 and its republication under sub-section (1) of section 15;
- (h) the form and contents of the notice of demand under section 14 and of a revised notice of demand under sub-section (2) of section 15 and the manner of service of such notice;
- (i) the manner in which a statement republished under sub-section (1) of section 15 may be added to or altered, and the form and manner of publication of a supplementary statement under section 16;
- (j) the procedure to be followed by the appellate and revisional authorities mentioned in sections 17 and 37;
- (k) the manner of, and the amount of fees payable for, supplying copies under section 19;
- (l) the grant of abatement or remission of the improvement levy under section 20;
- (m) the manner of collection of the improvement levy and interest under sub-section (1) of section 21;
- (n) the date of payment of improvement levy under sub-section (2) of section 21;
- (o) the manner of refund of improvement levy under section 22;
- (p) the procedure and conduct of officers and persons authorised under sub-sections (1) and (2) of section 24;
- (q) the offer of compensation, and the manner of assessment by the Collector of damage, under sub-section (3) of section 24;
- (r) the exercise of powers under sub-section (1) of section 25 to enforce the making and delivery of statements and production of documents;
- (s) the period within which persons shall not have any right to a supply of water under section 29;
- (t) the manner in which objections shall be called for and dealt with under section 30;
- (u) the issue of orders under sub-section (2) of section 32 for the modification of obstructions to the free passage of water through or over land;
- (v) the procedure to be followed by the Collector under sub-section (1) and sub-section (3) of section 36;
- (w) the transfer of disputes for decision under sub-section (3) of section 36, and
- (x) the grant of compensation under section 36.

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of 1935.]

(The Schedule.)

THE SCHEDULE

[See sub-section (1) of section 27.]

Ben. Act III
of 1876.

(1) The Bengal Irrigation Act, 1876.

Ben. Act VI
of 1880.

(2) The Bengal Drainage Act, 1880.

Ben. Act II
of 1882.

(3) The Bengal Embankment Act, 1882.

Ben. Act
VIII of 1895.

(4) The Bengal Sanitary Drainage Act, 1895.

Ben. Act IV
of 1915.

(5) The Bengal Embankment (Sunderbans) Act, 1915.

Ben. Act VI
of 1920.

(6) The Bengal Agricultural and Sanitary Improvement Act, 1920.
